

The Need for Environmental Impact Assessment Before Financing

Introduction

Contrary to popular belief, money is a chattel to state treasuries, a measure of wealth to individuals, and a mere commodity to banks. Setting aside for a moment other interested parties and/or pressure-groups — such as bank robbers and tax departments — banks and individuals are rather tenuously linked, at least in capitalistic cultures, by the ethic of shareholding, but are otherwise largely at odds with each other. In exchange for such things as 'bank security' and 'practical convenience' — two good, solid, modern oxymorons — the individual actually pays to leave his or her money in a bank. For the privilege of 'owning' a deposit account or a share or bond, he or she pays even more. Moreover his or her prerogative of 'talking to the manager' is likely to cost an additional 'pretty penny'.

Simply stated, bank profit will be high only if individuals can be persuaded to hand over additional 'margin', interest, or commission — something which the individual will rue if he or she is not, at least, a shareholder — and only if the bank is able to lend securely. 'Keeping costs down' can no longer be such a convincing contributor to profit, if, as every customer knows, such costs are now being charged to him or her 'at the front end'.

In spite of some currently adverse publicity, banks have an important job to do and, in one form or another — as guardians, counsellors, and redistributors of our wealth — they are here to stay.

But, you may well ask, what has all this to do with the 'global commons' and, more particularly, Professor Stone's excellent Guest Editorial published above? And what could a humble bank manager possibly contribute to the cause?

Exploiters of the Commons

The pertinent feature of Professor Stone's not-so-hypothetical theme of exploiters of the 'Commons' is, as he writes, the cost-free nature of the facility — whether it is the harvesting of food, the use of waterways or aerial space, or the jettisoning of rubbish. For the cost of sale of a free product or service will inevitably be less than that of something for which a price must be paid.

This layman would wager that being privileged to write in such a distinguished journal on such a subject as this, would all but equate with preaching to the converted. Sadly, it would seem just as safe to wager that the average bank manager, party as he might even be to the financing of an exploiter of the 'commons', would not have the faintest idea of any environmental implications of his involvement.

Computer Revolution

The latest great revolution (a euphemism in this context for disaster) experienced by the banks was that of the computer. Yes, it enabled them to increase their turnover by a factor of x ; yes, it made it possible for certain calculations to be speeded up; yes, customers could benefit from the seemingly infinite ways in which their accounts could now be reported and analysed; and there were many other dazzling applications. But there were also *traumatic drawbacks*.

With the lion's share of their budget earmarked for technological progress, bankers allowed themselves to be stampeded into a race for something which, *a priori*, they were unable to define, as they were not technologists. 'This is what you need', said the technologists, who knew next to nothing about banking. This fascinating new toy, the computer, could of course 'think' far faster than the human brain — or so it seemed. However, real comprehension of the phrase 'garbage in, garbage out' took a long time to filter through to management!

The experience, which should have been provocative and inspiring, became a nightmare for many of the older, more senior, generation. In what was to be an ideal, paper-free environment, 'print-outs' for controllers, auditors, and others, became the rule rather than the exception. And so it went with the computer revolution.

The Environmental Revolution

Due consideration of environmental implications seems destined to be the next great revolution in banking, and no one involved can afford to make a mess of it, any more than the world as a whole can afford any sort of a mess being made of it. There are, already, valuable parallels in the computer experience.

Guardedly — in view of speciality or competition, fear of error, or mere shyness — bankers commune with bankers, teachers with other teachers, and ecologists with their like. Politicians, columnists, idealists, and others, even with the best of good intentions, succeed only in blurring the lines across which constructive bilateral discussions might, in time, have begun.

With a view to hastening this process of discussion, a symposium* was held in Zürich, the 'banking capital' of Switzerland, last November, in which representatives of seven leading international banks listened to short presentations by experts in various ecological fields. The latter included representatives from The World Bank (environmental assessment), the Business Council for Sustainable Development, the Paul Scherrer Institut (solar energy), the Education Network for Environment and Development at the University of Sussex, the Schweizerische Stiftung für Landschaftsschutz und Landschaftspflege (Swiss landscape protection), Ciba Geigy SA (experience of a major international chemical company), Unisys (computer applications), and McDonald's Restaurants (food and packing waste).

During the Workshop, it became evident that, among the banks present, there were distinctly varying ideas about the responsibilities of financial institutions concerning environmental matters. These ranged as follows:

- a deep commitment supported by an environmental code;
- internal energy conservation measures at the level of middle administration management;
- environmentally-friendly funds for investors; and
- no definable policy [or even interest†].

There is no doubt, however, that the collective message from the experts both at this meeting and a previous symposium held in London, England, in April 1991, is being digested and turned into action by the banking and finance fraternity. Thus it may be no coincidence that, since the Workshop in Zürich, the largest Swiss bank — the Union Bank of Switzerland (UBS) — has joined that select group of banks which have their own officer or officers responsible for environmental coordination.

Three aspects of the above are as essential for the pursuit of the goals implicit in Professor Polunin's declaration of Biosphere Day†† on 21 September last, as they are for the good functioning of Professor Stone's Global Commons Trust Fund, namely the all-encompassing subject of laws for environmental protection, buttressed by environmental audits, and toughened by retroactivity (*see* the preceding Guest Editorial).

Laws for Environmental Protection: — While the intangibility of the stratospheric 'ozone hole' or the scandal of the Chico Mendes case tend to be more newsworthy, laws on environmental protection are at last beginning to make themselves felt. Two important milestones are the (British) Environmental Protection Act of 1990 (hereafter referred to as 'the Act'), which became law in November 1990, and the proposed EEC Council Directive on Civil Liability for Damage caused by Waste (hereafter referred to as 'the Directive'), which is still in draft form (Wilde Sapte, 1991b, 1991c, 1991d).**

* Reported as 'Banking and the Environment: International Workshop' in the Conferences & Meetings Section of this issue. — Ed.

† My own insertion referring to some not represented at the Author's valuable Workshop. — Ed.

†† See also page 8 of this issue. — Ed.

** For completion of References, see page 22 of this issue. — Ed.

In the United States, following the case of *US versus Fleet Factors Corporation* [1990], the principle of lender liability for environmental damage has become firmly established (Wilde Sapte, 1991a).

Although 'the Act' does not expressly discuss lender liability, banks should not draw comfort from this (Wilde Sapte, 1991a). Under certain of the Act's provisions:

- a) the principle of 'the polluter pays' can be extended;
- b) significant new civil liability can be imposed; and
- c) direct liability on lenders can be imposed.

'The Directive' is more explicit in imposing liability on the 'producers' of waste, where the word 'producers' is deemed to include the party who had 'actual control' (e.g. as mortgagee). A lender may not limit or exclude such liability by contract (Wilde Sapte, 1991d).

Other individual European countries are beginning to 'talk tough' on this subject, and a test of Germany's draconian new legal measures to protect the Rhine is eagerly — if perversely — awaited.

Environmental Audits:— It is now evident that the new priority of lending institutions, in order to protect themselves, will be to carry out environmental impact assessments (EIAs), in much the same way as they now measure credit-worthiness by analysing balance sheets and profit-and-loss figures. Many banks will no doubt wish to devise their own formats.

'The Environmental Audit', prepared by John Elkington (1990) for the World Wide Fund For Nature (WWF), is a good model.* Self-study is the best test. But the real point should not be missed: if the banks have at least learned some virtues of speed from their computers, then there is no excuse for delaying — that is, if they are still looking for profits in the medium and long term.

Retroactivity:— The US subsidiary of Ciba Geigy has just settled a dispute, which began in 1984, concerning hazardous waste which had, for years previously, seeped into a residential area near their Toms River, New Jersey, plant. It has been estimated (Wall Street Journal, 1992)** that costs of settlement could reach US\$ 75 millions. The company is the latest in a growing list of corporations that are suffering from the effects of the retroactive clause in environmental legislation.

The EEC Directive will rule that liability attaches to the deemed producer of the waste *at the time when the damage or injury occurred*, NOT when the waste was brought on-site. A lender, therefore, seeking to enforce its security, could be held responsible for damage caused by waste brought to the site before the date of the loan contract (Wilde Sapte, 1991d). This should be a daunting prospect for any bank worthy of its name — a situation which could easily have been avoided if a proper environmental impact assessment had been made in good time.

Oceanic and Atmospheric Commons

The oceanic part of the 'Global Commons', as defined by Professor Stone, continues to shrink not least in the all-important matter of international support. Ten years ago, at the Third UN Conference on the Law of the Sea, the Convention was adopted by 130 nations, with four (including the USA) against and 17 abstaining (Borgese, 1983). At a later meeting at Montego Bay, Jamaica, 119 of the nations signed the Convention and 143 signed the Final Act of the Conference. Nevertheless some agreements of the Convention are slowly being transformed into law through the UN Regional Seas Programme. In addition, a Preparatory Commission has been charged with the task of preparing the ground-rules for, and regulations of, an International Seabed Authority.

At first sight, this seems a good beginning; but an important stigma remains. Although the ocean for the first time became a three-dimensional finite resource, 60% of which was reserved for the traditional freedom of the seas, the convention placed the 40% adjacent to the continents and islands under the management of the political states which were deemed to have possession of the respective maritime tracts. Minimum national sovereignty was tacitly stressed rather than maximum global interest: rights rather than duties.

Much the same concept is evident in other debates about our 'Commons'. In recent discussions and conventions on the subject of the 'Ozone Hole', for example, weight seems — at least to this layman — to have been placed on medium-term commercial goals rather than immediate (and long-term) global considerations. But this is only the 'first hurdle', and is a circumstance that seems to be common to all aspects of the environment.‡

Global Commons Trust Fund

The logic in Professor Stone's editorial is irrefutable, but perhaps a dimension could be added. The concept and term of tax — in any society or context — is an unpopular one, and we should not overlook the fact that our world is at this moment fragmenting into new, more numerous and more complex, political permutations. Each new sovereign state will be needing its own controller of inland revenue, not to say armed forces, etc.

The idea of a Global Commons Trust Fund (GCTF) must be endorsed, in the same way as it is necessary for each bank to have a new item in its balance sheet which might be called a Reserve for Environmental Initiatives, as was proposed by the undersigned at the World Clean Energy Conference in Geneva in November 1991 (McCammon, 1991; World Clean Energy Conference, 1991). But might not such a GCTF be used to draw up a Global Commons Balance Sheet, which would, in time, have its own Profit and Loss Statement? Added Value is the antithesis of a cost-free facility, and this concept could be applied to all of the segments which Professor Stone has cited.

The advantage of this refinement to the GCTF would be that initial outlay for feasibility and preparation of a draft Global Commons Balance Sheet and Profit and Loss statement might be available without the necessity of approaching and lobbying 150 or more sovereign ministries. While it might be necessary eventually to collect monies representing, for example, sales of fish, ocean-crossing dues, or pollution fines, through the respective ministries, the unattractive tax concept would have been substituted by an internationally acceptable profit motif, whereby the Global Commons as a 'dying concern' could thereby be quickened into a *going concern*. This should be seen as a 'fine-tuning' rather than a substantial change in emphasis of Professor Stone's timely recommendations.

Conclusion

International financial institutions, under the aegis perhaps of the World Bank, could play a key role in this new scheme-of-things. Their expertise — with the benefit of new-found knowledge of environmental affairs, and experience with environmental impact assessments† — would, in their turn, become widely indispensable. Indeed such independent and expert assessments should be made compulsory by law in all major financing nations before any fundings of new or extended initiatives with environmental implications of any kind or degree. It would of course be in everybody's interest — including the banks' — to preempt any such laws by customary practice rendering them unnecessary.

* See the account by Dr Robert A.J. Goodland in the leading Main Paper in this issue. — Ed.

** For completion of References, see page 22 of this issue. — Ed.

‡ As is implicit in Biosphere Day, updated on the following page of this Journal. — Ed.

† See, for example, Dr Goodland's Annexe 8 published on page 20 of this issue. — Ed.

†† After 30 years' experience in international banking, Antony McCammon is concentrating his activities on the responsibilities of banks in matters concerning the Environment together with proper use of the Global Commons. As a speaker of Portuguese and the chosen delegate of our Foundation, he will be taking this dual message as well as that of Biosphere Day to the 'Earth Summit' in Rio de Janeiro this coming June. — Ed.

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[Guest Comment concluded from page 7]

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